

**BRIGHAM CITY PLANNING COMMISSION MEETING
TUESDAY, JULY 15, 2008 – 6:30 PM
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT:	Joan Peterson	Chairperson
	Barbara Poelman	Vice Chairperson
	Lynda Berry	Commissioner
	Roger Handy	Commissioner
	Reese Nielsen	Commissioner
ALSO PRESENT:	Jared Johnson	Community Development Manager
	Mark Bradley	City Planner
EXCUSED:	Ruth Jensen	City Council Liaison
	Deon Dunn	Commissioner
	Paul Fowler	Commissioner
	Eliza McGaha	Secretary

AGENDA:

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*) for items not listed on the agenda.

PUBLIC HEARING / APPLICATION #3036 / ZONE CHANGE FROM A-5 (AGRICULTURAL DISTRICT) TO RR-1 (RURAL RESIDENTIAL DISTRICT) / 3205 WEST FOREST STREET / JEFF PACKER

PUBLIC HEARING / APPLICATION #3041 / VACATION OF GREENER PASTURE SUBDIVISION PHASE 1, LOT 1 / 1045 SOUTH 800 WEST / BRIGHAM COMMERCIAL PROPERTIES

CONTINUATION OF APPLICATION #3021 / CONDITIONAL USE PERMIT FOR “ESSENTIAL FACILITIES” 345kV TRANSMISSION LINE / ROCKY MOUNTAIN POWER

CONTINUATION OF APPLICATION #2383 / REQUEST FOR REVIEW OF CONDITIONAL USE PERMIT #2383 / 1047 WEST 600 NORTH / CORY WILKES

CONTINUATION OF APPLICATION #2609 / BLOCK 56 LTTL SUBDIVISION / SIDEWALK DEFERRAL AGREEMENT

DISCUSSION:

APPLICATION #3045 / SUBDIVISION / 470 SOUTH 100 WEST / REESE BEETON / SKETCH PLAN

REGULAR MEETING:

Ms. Peterson opened the regular meeting at 6:30 p.m. Reese Nielsen led the Pledge of Allegiance.

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES:

MOTION: A motion was made by Barbara Poelman to accept the May 20, 2008 regular meeting minutes. The motion was seconded by Roger Handy and passed unanimously.

On line 91 of the June 17, 2008 regular meeting minutes, the word 'that' should be added between the words 'but' and 'was'. On that same line a period should be added after the word 'it' and a new sentence started with the word 'She'.

MOTION: A motion was made by Barbara Poelman to accept the June 17, 2008 work session minutes as amended. The motion was seconded by Reese Nielsen and passed unanimously.

MOTION: A motion was made by Barbara Poelman to accept the June 17, 2008 regular meeting minutes. The motion was seconded by Lynda Berry and passed unanimously.

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*):

There was no public comment.

PUBLIC HEARING / APPLICATION #3036 / ZONE CHANGE FROM A-5 (AGRICULTURAL DISTRICT) TO RR-1 (RURAL RESIDENTIAL DISTRICT) / 3205 WEST FOREST STREET / JEFF PACKER:

There was no one present to represent this application. Mr. Bradley said the Commission did not necessarily need to act on this as there was no representative present or they could act if they were comfortable with it. This item came as part of the earlier sketch plan as a proposal for the property. It is currently zoned A-5 and is adjacent to an existing P-R-R-1. The request is compatible with the General Plan and is consistent with the adjacent zoning of the property. He said they were going to ask the applicant if they had considered a P-R-R-1, which is more of a planned type of development in which they could have more flexibility or restrictions based on creating some of their own design guidelines with that planned zoning. Because of the nature of a planned zone, Mr. Bradley suggested it should be a voluntary request by the applicant, should the applicant choose that.

MOTION: A motion was made by Roger Handy to open the public hearing. The motion was seconded by Lynda Berry and passed unanimously.

There was no public comment.

MOTION: A motion was made by Reese Nielsen to close the public hearing. The motion was seconded by Barbara Poelman and passed unanimously.

MOTION: A motion was made by Reese Nielsen to continue application #3036 to the August 5, 2008 meeting in order to give Staff a chance to discuss with the applicant the possibility of a P zone as opposed to simply and RR zone. The motion was seconded by Roger Handy and passed unanimously.

PUBLIC HEARING / APPLICATION #3041 / VACATION OF GREENER PASTURE SUBDIVISION PHASE 1, LOT 1 / 1045 SOUTH 800 WEST / BRIGHAM COMMERCIAL PROPERTIES:

Mr. Bradley explained there is a commercial development that would like to include this particular area in their project. As we cannot plat over an existing plat, this undeveloped phase one needs to be vacated so that property can be included in the overall development. One thing that was not spelled out in the Staff evaluation is that this be approved subject to the replacement of the new plat because of the easements and the utilities that are actually in the ground in that area so it is asked that there be a stipulation attached to the consideration on that request.

MOTION: A motion was made by Roger Handy to open the public hearing on application #3041. The motion was seconded by Barbara Poelman and passed unanimously.

Keith Sorensen came forward and stated that he is the architect working on this project. He said he is very much interested in a favorable recommendation.

Ms. Poelman asked Mr. Sorensen if this was in relation to the doctor's buildings that were being proposed next to the hospital. Mr. Sorensen replied that this entire parcel is to be subdivided which is one of the reasons they want to vacate the existing subdivision to they can accomplish that. He said the first phase will be a combined assisted living/independent living facility. There are many lots that will be developed as a medically related development.

Mr. Nielsen asked if the comment Staff had in respect to adding another stipulation to the vacation had been discussed. Mr. Bradley replied that it made sense that prior to finalizing the vacation of this lot that they have the other plat in place to represent those easements in protection of those utilities and the easements that were there before. Mr. Sorensen commented that it was a work in progress and is nearly complete. He did not perceive any delay in submitting that. Mr. Bradley said that stipulation should not have an effect on the new subdivision at all as they do not want to prohibit or hold it up; it is more in nature of protection. Mr. Nielsen clarified that the intent was a condition or stipulation, if they recommended approval to the City Council; it should be contingent on completion of the new subdivision plat in incorporating all the appropriate easements. Mr. Bradley said that was correct. Mr. Sorensen commented that they are anticipating that it would be accomplished and understood that to be part of their work.

MOTION: A motion was made by Roger Handy to close the public hearing. The motion was seconded by Reese Nielsen and passed unanimously.

MOTION: A motion was made by Reese Nielsen to forward to City Council with a recommendation for approval the vacation of Greener Pastures Subdivision Phase 1, Lot 1 of application #3041 with stipulations that it comply with the Staff evaluation, comply with Chapter 25.05.01 Amendment to Subdivision Plat, Utah Code 10-9a-608 Vacating or Changing a Subdivision Plat and contingent on completion of the new subdivision plat Maple Springs Subdivision with the appropriate easements from this vacated subdivision plat. Based on the finding that the applicant will comply with the Staff evaluation and that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with the Brigham City General Plan. The motion was seconded by Roger Handy and passed unanimously.

CONTINUATION OF APPLICATION #3021 / CONDITIONAL USE PERMIT FOR “ESSENTIAL FACILITIES” 345KV TRANSMISSION LINE / ROCKY MOUNTAIN POWER:

Steve Rush, Rocky Mountain Power (RMP), came forward. Ms. Peterson said they appreciated all the information they have provided and that the Mayor had said he had agreed to provide some data about where they got their financial numbers on the property cost and so forth. Mr. Rush said they had agreed to work with the City and provide some information but not as part of this particular process. He said they had a discussion with the Mayor and City Administrator. He said they are struggling because they have bids for hundreds of millions of dollars out there right now and the information in there is all part of the competitive process. Mr. Rush said he had a conversation with the lady that manages that process just prior to coming to this meeting and they are trying to find a way of giving the Commission as much information as they can without putting themselves in a legal bind or releasing very confidential information as part of this; the numbers are really large and it is important to them. The intent goes back to what their President said to the COG which is they will provide as much information as they can. Mr. Rush said they have indicated that the revised line proposed by the COG is five miles shorter but \$36 million dollars more. The upshot of that was very much tied to the foundations, the wetlands issue and everything else. He said their challenge is to give them enough information to bring some comfort and he realized that it is not so much for this body as it is for the residents of the community at large.

Mr. Nielsen commented that it is this body's purview to take action on this request but because of the nature of what goes on there has been a lot of other involvement with respect to this application. He asked if they had seen all the Staff evaluations and comments that have come back. Mr. Rush replied that they had. Mr. Nielsen asked if there had been anything that had caused them any concern such as some of the comments regarding fire danger during construction, roads, runoff and infrastructure protection and so forth. Mr. Rush replied that they did not cause them concern. He said they met with Staff from all the departments and their engineers and went up on the hillside and there is nothing unusual there that they would not deal with in any other location. He said they talked specifically about the wells, working around the current and future wells, steep terrain, rocks and that type of thing; they deal with that in countless locations. He said they are very comfortable with the Staff's requests and conditions that they would place on them through that report.

Mr. Nielsen asked Mr. Rush, as it related to the Brigham City portion, if they knew how many property owners would be affected that would actually come in an area where they would be concerned that the line would be close to a residence. Mr. Rush replied that starting on the north with the line that would come in on the east bench from Honeyville, they would go the entire length of Brigham City east of those existing transmission lines that are up there by the Questar pipeline; there are no homes along that entire area. They would go around past the gravel pit as their line actually separates and goes higher up on the bench to the east of the existing lines that come down through the golf course; so they stay away from homes in that location. The discussion continued with the use of the most current applicable map. There are two sets of transmission lines on the east bench and Mr. Rush said they would be east of those all the way up.

Mr. Nielsen asked Mr. Rush if they had been in contact with the owner of the gravel pit that is south and east of the road that is opposite from the existing gravel pit site; LeGrand Johnson. The response was that they had been in contact with him at the public open house. Mr. Rush stated their request to them was that they want to dig as much of that as they can and want RMP to stay as far to the east as they can; up to the property line by the Forest Service on the boundary. Mr. Nielsen continued following the route with the map clarifying that they were still staying east of the road on the east side where the golf course property is and then the line goes down into Perry. Mr. Rush stated that was correct. Mr. Rush pointed out where they will cross Sardine Canyon and start down the hill. In that location, there are actually two homes together and a larger home to the south. He stated that those two homes are the houses that they come close to and they talked to those individuals at the open house that was held at the Senior Center. The Calls were there but the other property owners were not. Mr. Rush stated that

they spoke to them and indicated that the Mayor was part of that conversation as well as some other folks. He said the gist of that conversation was that they had to adjust their line to get off that hill in a manner they had not planned on. They come between the two homes and do not come any closer than 75-feet to either home which is still relatively close. Mr. Rush said to put it in perspective, all along Weber and Davis Counties there are homes built right back up to the 75-foot line, of the 345kV line, on the property line. He said they had the intention of staying to the east of that and going through but they could not engineer that. Mr. Rush said they told those property owners, in this circumstance, that they will negotiate with them to acquire right-of-way through there. If that is acceptable to them, that is great; if their preference is to sell to RMP, because of the proximity in this location which is pretty unique along this section of line, then they will go through market appraisals and RMP will purchase their property from them. Mr. Rush said he indicated to the Mayor and Staff that their intention is to hold on to the homes until their line was completed and then they would put the homes up for sale and market them. He said to the astonishment of many people those homes will sell very readily, which is not a surprise to RMP, as people build next to their lines all the time. Because of that circumstance RMP believed that to be the equitable thing to do.

Ms. Poelman asked how far down the line would be from the Gardner home and also asked if it was in their view. Mr. Rush said he did not know the answer to that because it drops off very steeply there and they are coming in at a diagonal. He said his guess is that they would be pretty low in the view line.

Mr. Nielsen asked as a matter of curiosity what they would do if someone did not want to cooperate. Mr. Rush replied that RMP has the power of eminent domain. Their first choice is to negotiate. There is a State Ombudsman whose purpose is to work on these types of issues. Mr. Rush said they have been handing out cards and names of the Ombudsman because they have a very good relationship. The last recourse is for them to go to condemnation which happens very infrequently with their company. Eminent domain basically places it with the courts and the courts make the decisions as to the value of the property. Mr. Rush stated they have appraisers working for them as part of the process but if they want an independent appraisal, RMP will work with them on that prior to going to any further steps because RMP wants them to make sure they are getting the best deal.

Ms. Berry asked about the spreadsheet. On the bottom is listed *right-of-way cost to date* and over in the COG submittal they have listed \$2,400,000 in that column. She asked if RMP had already spent \$2,400,000. Mr. Rush replied that he was not sure. Harold Dudley, RMP, came forward to answer that question. Mr. Dudley stated that was the cost-to-date of what they have spent for right-of-way as well as preliminary right-of-way work, title work, survey work and those type of expenses. Ms. Berry asked if that was specifically for the COG submittal or for the whole entire process they have endured while they have been working with them. Mr. Dudley said that was the amount along the route within Box Elder County that has been spent to date. Mr. Handy commented that he thought Ms. Berry was asking for the number for their route but the number from the COG proposed alternative route is higher. Mr. Rush said the issue is where it states *to date*. Ms. Berry commented that the City was trying to determine the differences between RMP's preferred route and their preferred and it is listed in our preferred column. Mr. Rush said to his knowledge on the refined COG proposal he did not know that they have spent money on that particular right-of-way.

Ms. Berry also asked about the difference in the delays in the time frames and costs. Mr. Rush said there is a huge amount of uncertainty and said he will be able to give them the level of detail she is looking for on this which is what they are trying to work through. He said the delays are pure and simple as they have done surveys on the route they had selected. They have paid for flyovers where they do a sophisticated survey and are three and four month processes. If they start over on anything then they move everything back to the beginning point as well as all the other construction delays. They cannot do all of these things simultaneously so they have to be staged. Once everything is moved back then it has a chain of events. Their people worked through this as best they could to

determine how they could do it and what the effect would be on the end date. That is the best information they have on that. Mr. Rush said they have been struggling on how they can make up ground because of where they are now to get this project built, let alone delay it another six to nine months.

Ms. Berry asked if they had an estimating program that got them to their numbers. Mr. Rush said that was based on firm bids. They have had to rebid because it has drug on so long and cost of steel and cement have increased dramatically. Without going into confidentiality issues, Mr. Rush said the cost on the lines, miles and the foundations is based on hard figures on bids not conjuring up a number. She asked if the numbers represented some type of percentage increase because of the increase in what he just discussed. Mr. Rush replied that the difference was that construction in the lower area is more expensive because it is much wetter and the foundations are much bigger as in wider and deeper. The key driver is the material cost which goes up astronomically. They are at least six months further down the process than they thought they would be on this and the cost just keeps going up. He said that in this case, time is literally money. Mr. Rush stated that it was a combination of three things, cost, time and reliability issues.

Ms. Berry said that is looked like the wetland mitigation and railroad mitigation are the prime drivers on that particular spreadsheet. Mr. Rush replied that they were as far as cost, as well as timing and decreased reliability and the potential for the line to be derated and RMP having to build another line.

Ms. Poelman commented about the geotechnical report and the City's Engineer who reviewed it as being a civil engineer. She said there was a question as to if it would be well to have a qualified geotechnical engineer give it a second assessment and asked Mr. Rush if he thought that was unreasonable. Mr. Rush replied that he did not think it was necessary. He said a lot of things are being built on the hillsides. They have the Utah Geologic Survey, in-house expertise as well as consulting engineers. He said they are very comfortable that what they are doing is safe and will be built for the long run and will withstand up to 7.4 on a seismic event. Mr. Rush said he had a discussion with the Mayor and City Administrator about this topic. He said that if there is a concern on the City's part and they would like to do some more studying on it, that would be fine but he suggested granting them their conditional use permit because they have met all the criteria that has been given to them and list that as a condition so that if it comes in and the opinion is different and does not agree then they would have to resolve that. They want everyone to understand that it is being built to the highest standards and to be safe. He said they have no concerns because of the work they have done on the seismic end.

Mr. Rush restated that they would like to move ahead and get all stages of this project approved so they can begin construction. Mr. Nielsen asked if they had received approval from anyone else. Mr. Rush replied that they have not and that Brigham City has been first in the queue for a while. They are on the agenda to meet with Box Elder County. They have been in discussion with Elwood since the COG meeting and they have agreed to meet with them again. There have been a lot of political dynamics independent of the permitting process and he said they felt that have worked through that and it is time to work with the individual communities and the permits.

Ms. Berry recommended that they get submittals that do not open up a lot more questions. She said someone could look at their spreadsheet and question its meaning. She said she did not think they could fault those who may delay them because they are trying to educate themselves and make the right decision for their constituents. Mr. Rush replied that he respectfully disagreed with her because the purpose of the Planning Commission is to not address the politics of this which are really decisions that the Public Service Commission would make; the purpose of the Planning Commission is to deal with legally requested applications within the parameters of the law. He said this is information that they have been trying to work through cooperatively with the elected officials in a political forum but not the same as what they are doing here tonight. Ms. Poelman commented that when it passes this

committee it will not go back to the City Council to discuss anything such as that. Mr. Rush said what they have with the COG as a whole, as well as the elected officials, is to follow through on a commitment at the Legislature to explore the alternative route that the COG felt would be a better alternative. Mr. Rush commented that their President stated to the COG that no one wishes more than he or his team that it would work out that way but from a standpoint of cost alone they could not go to the Public Service Commission and justify selecting that route. He said those people, on the elected level, that have been working on this for months with them, they have said RMP had done their due diligence and have tried to do what they are supposed to do as a public utility that has to answer to the right players and the Public Service Commission. Their task is to build this inexpensively, on-time, and it must meet the reliability criteria. Mr. Rush stated that it is disappointing to some people that it did not reach the conclusion that some wanted out of it. He said for two days they drove the elected officials through every piece of this. He took their President over every foot of their route and the refined COG route, walked through it and put this together. He reiterated that this is a political process versus what they are doing at this meeting. He said he thought the agreement with the Legislature and the COG was that they would look at it and if they could come up with an effective compromise they would do so but it did not work out.

Ms. Poelman asked Mr. Rush's opinion as to if an action at this meeting would have a bearing on any effect from the upcoming meeting on Thursday. Mr. Rush replied that it would not, at this stage, because the route they are going to permit and go for is the original route which was the presentation they made to the COG. There is not going to be any refinement to that route, it is just a question of working the unincorporated County with the County, and working with Willard who has a permit requirement and Elwood; Perry, Tremonton and Honeyville do not. That is normal for any line they would build. Typically, they do not have to do a conditional use permit for a line; they do it for substations. He said that whatever happens with this meeting they will still pursue permitting in all of the other communities and they are in the process of filing for those. For the ones that have not been filed they are working with them. There has been discussion with attorneys about affidavits from property owners of which he said the Planning Commission had been privy to. He said they are pressing forward.

Mr. Nielsen said he did not have any more questions for RMP but had a question relating to a comment made by Mr. Johnson about Staff wanting to reword some of the stipulations or conditions for approval on obtaining appropriate permits and approvals and wanted to ask if they had any further thought on that. Mr. Nielsen referred to a list of things they had talked about and Staff wanting them to come up with a better way of writing the conditions on obtaining permits such as the FAA, Corps of Engineers, and such and asked Mr. Johnson if anything had transpired on that. Mr. Johnson replied that one of the conditions of the CUP would go through and combine those two together and reword the requirement to say *obtain proper permits from regulatory third party agencies*. He said, for example, if any of the regulatory agencies that require permits such as the FAA and the Army Corps of Engineers, a permit from them would be a requirement. Ms. Poelman asked about the Staff comment from Emergency Services on a mitigation plan for fire and Mr. Johnson suggested if that is not clarified enough in the Staff comments then they should add that.

Ms. Poelman asked about the possibility of trails that RMP previously said they would do. Mr. Rush said he provided a copy of agreements that they have worked out with Weber County Pathways, as most recent examples, to show what could be done. He said there is a deliberate intention to not include that as part of the conditional use process but they have a strongly stated agreement to do that and work with all communities. He said they would be very flexible, would very much like to do that and thought it would be in everyone's best interest. Mr. Rush said it puts the property to very good use; they have linear corridors in many places which have been incorporated. His answer was *absolutely, yes*. Ms. Poelman asked if they would go through the Mayor to purchase that area. Mr. Rush replied their stated goal is to acquire property in fee for this line. He said they would make a concerted effort as opposed to defaulting to a right-of-way acquisition; they will do their best to purchase the property in

fee because that will allow them to control the rights and give things. If all they have is right-of-way, that would be problematic as they cannot give rights they do not have. Mr. Rush stated that Mr. Dudley is in charge of property acquisition and their goal is to acquire everything east of Brigham City, along the bench, in fee. There may be isolated pieces of property that someone may want to sell them which they would purchase as they have done in the past; which may be a very appropriate place for a trailhead or parking. They have done this in other communities.

Mr. Rush said ~~trails~~ trails are a fairly recent phenomena as far as cities and counties engaging in interest. In Weber County's case, it is a Pathways organization which is nonprofit. They have come to them, through volunteers, and they have worked through it. It has been an evolutionary process for them. They allow the people in the communities to make the trail. The most recent example took place in 2005 on the bench above Pleasant View and North Ogden where there is a 345kV line and two sets of 230kV lines that goes from their Ben Lomond Substation, up over the mountain and North Ogden Divide where a beautiful single track trail has been put in. The residents living nearby were the largest challenge in that because they saw it as an attractive nuisance in regards to getting more people in there from outside their neighborhood. Mr. Rush said in that particular contract they stated no motorized vehicles except those authorized such as RMP, emergency, fire and police vehicles. He said they worked with the Pathways group to put up signs and gates to limit it to what makes sense up there such as hiking, biking and equestrian. Mr. Rush said they could work with them to control that which is what those contracts stipulated. Ms. Poelman commented that other than having the land, Brigham City is really back to where they are now as they do not have the money to do that. Mr. Rush replied that there is money available, because this line is a direct impact on the community which they look at as being a reasonable accommodation for the line. He said it was their call, as a city, to how the City would want to do that and they would work with the City on that by the Mayor contacting them. Mr. Rush said he could go further but what he has been led to believe is that the City is a little uncomfortable on exactly how they structure this and they want to do it separately from the conditional use permit. He said they very much want to cooperate and work with them.

Mr. Rush also said the changes they talked about here are totally acceptable and they fully intend to comply with any agency whether it is the FAA or Army Corps of Engineers or others and have them sign off where they need to. Ms. Poelman asked if the wells were covered in that or if they were covered in the Staff recommendation. Mr. Johnson replied that it is in Brigham City Ordinance and also the State of Utah Division of Drinking Water.

MOTION: A motion was made by Reese Nielsen to approve the conditional use permit for application #3021 with the following stipulations and conditions: that it comply with Chapter 29.06.060 and 29.06.070 Conditional Uses; comply with Chapter 29.18 Sensitive Areas Overlay Zone; comply with Brigham City Source Protection requirements for water sources; that they obtain appropriate agent/property owner authorizations for such lines; that they obtain proper permits and approvals from third party regulatory agencies such as the FAA, Corp of Engineers, etc.; they post a bond for reclamation of hillside disturbances and that the reclamation plan is to be submitted to staff for review and final approval; that it incorporates poles of color that best blend into the hillside; that it comply with Chapter 29.24 Design Review; that it comply with Chapter 29.19 Airport Overlay Zones; comply with the Staff evaluation; and that a satisfactory review of the geotechnical report by an appropriate engineering individual or agency, as selected by the City Staff and Engineer, be completed and such review to be completed in a timely manner by the City Staff; based on the finding of fact that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of

persons residing or working in the vicinity or injurious to property or improvements in the vicinity through mitigation provisions of the above referenced conditions; that the selected route, based on available data provided the Planning Commission, best satisfies the cost, risk and other criteria public utilities are required to go through in selection of the route; that such use applied for is necessary to provide a service or facility that will contribute to the general well-being of the area and the city and that such use is found to be in compliance with Chapter 29.06 Uses and that such use is in compliance with the Brigham City General Plan. The motion was seconded by Roger Handy.

Discussion: Mr. Handy said there is really nothing to like with this sort of thing except the power that is provided through the process and through the lines. There are a lot of people in the community who would not like to see this happen; however, he said he thought if they changed the route there would be a different set of people who would not like to see it happen probably just as much. He said he thought Pacific Power had provided them with all of the information that they had requested and had been forthcoming in the things they had asked them to do. What they have asked is in compliance with all our laws and ordinances and it is the duty of the Planning Commission to see that those laws and ordinances are adhered to. He said they do not dictate routes; they act upon applications. Mr. Nielsen concurred and said he was glad that was stated and hopefully is recorded and inserted into the meeting record. Ms. Poelman stated she would like to second everything that was said.

The motion passed unanimously.

CONTINUATION OF APPLICATION #2383 / REQUEST FOR REVIEW OF CONDITIONAL USE PERMIT #2383 / 1047 WEST 600 NORTH / CORY WILKES:

This item was continued from the previous meeting where the Commission asked that Staff work with the two property owners to try and resolve some issues with the fencing. Mr. Bradley demonstrated some of the materials provided by Cory Wilkes. One was vinyl slats to be put in between the chain link fence which, from one angle, cannot be seen through but from another angle can be seen through a little and from a direct shot, looking at it from the adjacent property, it does provide a lot of screening. There are different sample colors to choose from. The other type of fencing is a type of mesh that is often used around a tennis court, which could be tattered over time.

Mr. Bradley explained that there was a letter from the adjoining property owners stating what they would like to see take place. There was also a letter from Mr. Wilkes stating that he is okay with conditions 1, 2, and 3, that were expressed by the adjoining property owners, and made comments starting with number 4. Mr. Bradley said this is a conditional use and as had been stated, whether for clarification or from the applicant feeling that this type of fence still meets the intent of the ordinance, it needs to be determined by the Planning Commission what type of fence Mr. Wilkes should have and not continue to go back and forth between the property owners because it will not get resolved. He said there has been some good consensus that has been made. He also presented some photos of the property. He pointed out the solid building and the doors that exit out the back. There is a little break between the trees on the north end. He pointed out that the farm fence belongs to the adjoining property owners. There is a little space between the vegetation and the building. Mr. Wilkes feels that the building actually creates that screen. The concern from the adjoining property owner is the employees or other activity that take place behind the building. Mr. Bradley stated that the Planning Commission needed to determine what the fence was to screen and if the building provides that

screening. If it does not, the fence, either brown or green, seemed to be acceptable to both parties; beyond that, Mr. Wilkes said he is willing to build a concrete wall but would like time to be able to build it. There are some questions about how that would be built. Staff did not feel that the concrete wall would need to be required and the proposed fence would be sufficient to provide that screening but if he chose to build a concrete wall, that ~~could~~ would be up and beyond what would be a requirement to meet the intent of the ordinance.

Ms. Poelman commented that, in the past Planning Commission minutes, Steve Kotter, in his motion, said that a chain link fence would be acceptable, as a minimum, and she asked if it was correct, as part of the original motion, that a chain link fence was acceptable. Mr. Bradley replied that the original minutes talked about solid walls and a solid wall could not be a chain link fence with slats but it was brought back to this body and was determined in those minutes that they consider the alternative proposals. Between the two parties, the chain link with the wide slats has been deemed adequate. Mr. Bradley commented, as he understood from the previous minutes, that was considered acceptable as long as it was okay with the adjoining property owner. He said by the tone of the two letters that had been submitted that they are both willing to do the chain link with the wider slats.

Joyce Wiley came forward and stated that she represented herself as well as her husband, Lloyd McNeely. Ms. Wiley said their intent was to protect their home from having the public next to it. She said, in a good faith move, they would accept the chain link fence with the slats in it. She said if Mr. Wilkes wanted to build a solid wall, they would prefer that. Ms. Wiley said she talked with Jeff Leishman and he told her Mr. Wilkes was not happy with their counter-proposal and wanted a clarification from the Planning Commission. She said she was at a loss to know how to clarify it. She said if the chain link fence, with those particular slats, is what Mr. Wilkes can afford to do then that is certainly better than anything they have had for several years and they are willing to accept that. Ms. Wiley stated that Mr. Wilkes would put up a solid wall if he had more time but she assumed Mr. Wilkes would be in attendance to explain what he was talking about in regards to his definition of more time. Ms. Peterson said the motion from the Planning Commission put a six month time limit on it. She explained that there was no agreement at the previous meeting and as Mr. Wilkes had stated that he had been unsuccessful in talking with Mr. McNeely, the Planning Commission instructed Mr. Leishman and Mr. Wilkes to meet with them and come to an agreement.

MOTION: A motion was made by Roger Handy to accept as a condition of the continued conditional use permit for application #2283 that the fence in question be built by (inaudible) PVC coated wire number 9 durable finish – 10, that type of material that had been discussed. That the fence be extended to the north, a minimum of 12-feet beyond the end of the building, to the end of the retaining wall on the south and the fence should be one color, brown or green; the height of the fence will be 6-feet; it will be a 6-foot high fence and that Mr. Wilkes be required to construct it within the next six months. The motion was seconded by Barbara Poelman.

Discussion: Mr. Nielsen asked if Mr. Handy would amend his motion to allow a solid masonry fence as an alternative, if it is agreed upon between the two parties. Mr. Handy said he was agreeable to that. Ms. Poelman asked if it would be within the six month time frame. Mr. Nielsen said it would and mentioned keeping everything the same except as it was mentioned by Mr. Wilkes that he would consider a solid masonry fence in lieu of a chain link fence; he wanted that to be an option. Mr. Handy said he only wanted to do that because he did not assume he would be able to do that type of fence within six months and would need to wait until he had the proper capital to do that. Mr. Handy

said he would state that an alternative but he would not want to say that it was an alternative that needed to be completed within the next six months. Ms. Poelman asked what if Mr. Wilkes chose the alternative and it was not put into the motion. Mr. Handy said he did not want to get back into the same type of back-and-forth type of thing. He said he thought if they approve this Mr. Wilkes would go ahead and put that fence in and that would be the end of it. Mr. Bradley asked for clarification that no matter what, in six months Mr. Wilkes needs to put at least the chain link fence up even if he chooses the alternative. Mr. Handy clarified that it needed to be up within six months; if Mr. Wilkes wants to do something else it would be a whole new ball game, as far as he is concerned. Ms. Poelman clarified that there would not be a time limit on the other alternative. Mr. Handy said he would prefer to not have it in the motion. Mr. Nielsen withdrew his comment.

The motion passed unanimously.

CONTINUATION OF APPLICATION #2609 / BLOCK 56 LTTL SUBDIVISION / SIDEWALK DEFERRAL AGREEMENT:

Mr. Bradley explained that this application had been continued from the previous meeting primarily to be able to receive the reasoning of the Staff's recommendation. Mr. Handy said as he remembered they indicated that there were good arguments on both sides of the issue and they wanted findings of fact based on either decision that they made. He said what they had received was findings of fact on not approving the deferral. Mr. Bradley said if they wanted to send them back to get further information that would be fine. Mr. Handy suggested they continue and see what transpired but he wanted them to have an understanding. Mr. Bradley displayed a photo of the area which showed the new home that had been constructed. There are reasons on both sides as to why sidewalk should be put in and why it could be deferred. From an aerial perspective it showed areas of sidewalk which is the City's intent to put in sidewalk when areas are improved and developed. The City's recommendation is that there be no deferral.

Angie Rountree and Miriam Jensen came forward.

Ms. Poelman asked who would pay for sidewalk to be put in at such time as it is called for and asked if the labor would be provided by the City and the materials provided by the resident. Mr. Bradley explained that if it was done by a special improvement district it would be assessed to the property owner where the sidewalk would run in front of their property. He said the question is why a neighbor should pay for the sidewalk when it was a condition of approval for the subdivision for this property owner. He said that generally, on an assessment like that, they would take that entire length and divide it up between the property owners. He said he would have to talk to the engineer on how that would be done on a corner lot. Special improvement districts have been done in the City in the past. Mr. Bradley said improving the City is a constant thing; extending the asphalt, curb, gutter and sidewalk which are a benefit to the residents of those areas. He said he could not tell them what money would be available to do that. Ms. Poelman said, as she has been on the Commission for about four years, she knows that there is no money there. Mr. Handy commented that property owners usually approach the City and request a special improvement district in their area.

Ms. Rountree stated that they are not arguing about putting in the sidewalk; they would like to wait to put it in as the rules had changed prior to the house being built. There was an ordinance that required a sidewalk agreement when small subdivisions were done that the sidewalk would be put in. She said there had been a change allowing sidewalk to be put in at that time or defer it until sidewalk is put in on the entire street and at that time the property owner would have to install it at their own expense. She said they are prepared to do that and that is what they would like to do. She stated she talked to two

different contractors to get bids on the sidewalk and they told her it would be foolish to put it in now because when the rest of the block gets put in that piece of sidewalk would either be broken up or will not match up with the City's elevation. Ms. Rountree said her particular lot has about \$1500 in escrow. She went and measured and said they are looking at about 4 to 5 blocks of sidewalk for her particular lot which does not include the driveway. The biggest expense will be tearing up the driveway, putting in the sidewalk, possibly moving a water meter, the sprinkling valve and the sprinkling system. Ms. Poelman asked her if she had been informed to not put it there when she built. Ms. Rountree explained that 4-years-ago she was the developer with two other owners and they did sign the sidewalk agreement. She did not get notification that the sidewalk needed to be put in again. She did not get notification from the City until Tom Peterson, Building Inspector, came for the final inspection and asked where the sidewalk was. She said there is an existing curb that was cut prior to her owning the property and she told Mr. Leishman she would replace it immediately but was waiting to find out what would happen with the sidewalk before she got someone there.

Ms. Poelman clarified that her question was if someone told her she needed to put a sidewalk in when they laid the driveway. Ms. Rountree replied that no one told her and it was not until March 20, 2008 that she received an inspection report from the City Building Inspector that said sidewalk was needed and by that time everything was already poured and done. She said her bid was for \$1500 but that is for the cement which does not include moving the water meter or the other things previously mentioned.

Mr. Nielsen asked Ms. Rountree if the agreement was in place at the time the structure was built on the lot; knowing that when a structure was on that lot a sidewalk would be required. Ms. Rountree agreed that was correct and that they had signed the agreement in 2004. Mr. Nielsen commented that it should not have been a surprise that the Building Inspector said she needed sidewalk. Ms. Rountree replied that the inspection report reminded her of the agreement.

Ms. Jensen commented that she lives next door and was never told they needed a sidewalk. She said there is not a sidewalk anywhere in that area but there is one across the street, all the way down. She said there are other areas of town where there is no sidewalk at all on either side of the street. Ms. Jensen asked why they should be required to put in a little bit of sidewalk when all the people around them do not have it and commented that it would not be safe to do so. Ms. Poelman commented she did not know if it would be unsafe but rather that it may not be used.

Ms. Rountree stated she could come up with many reasons to not put a sidewalk in but the main reason she wanted the Commission to consider is the sidewalk deferral was added within that last four years. She said all they are asking for is a deferral so they can install sidewalk when the rest of the neighborhood does.

Ms. Poelman asked to know the reason behind the number five ranking on this property. Mr. Nielsen replied that at the previous meeting Mr. Leishman brought in the calculation sheet. Mr. Handy said it is an established neighborhood with sidewalk within 300-feet of it, across the street, which are the two main factors. Mr. Handy commented that he thought the problem is the Planning Commission is not comfortable with the sidewalk policy as it now exists. He said they approved a deferral recently that he thought was less deserving than this. Ms. Berry commented that that one was current and this one is in arrears. Mr. Handy said there are good arguments on both sides of this issue and suggested postponing this until they could come to some understanding how they are going to implement this policy or get it changed; otherwise they will not know from one meeting to the next how they are going to act on it. Ms. Peterson commented that the policy gives them leeway in each case to which Mr. Handy stated that was the problem.

Ms. Poelman commented that is when the situation should be looked at even though each view may differ which is why they have the opportunity to vote. In looking at that whole street, there is a beautiful

garden down there that has been there for years and they are trying to take property that has been empty and now has something good on it, and even though there was an agreement signed it bothered her to vote for something that does not make sense. She said in her opinion it does not make sense to put sidewalk in front of those two houses.

Mr. Bradley clarified that they are talking about one parcel and Ms. Jensen would not be required to do so. The language in the agreement stated *not until additional improvements be made* and it would be at a latter date when she would be required to do so. He said they have to look at improvements which need to be made when they can be. This was a requirement, a condition of an improvement for that lot to be created for a new home to be built there. He said the City does try to take opportunity for those improvements; if they do not take opportunity to do something now, when they will start. He said when special improvement districts are done in the future it will be an increased burden on cost for those improvements. Ms. Rountree said she would pay for it when that happens but she cannot sell the property. If she did sell the property it refers to the new owner because it is attached to the title. She commented that, at the previous meeting, her impression was that Mr. Leishman thought this was ridiculous as well.

Ms. Peterson stated that she agreed with Ms. Poelman and said she did not think it would be an improvement to put a piece of concrete in the middle of the block. Ms. Berry commented that she thought what Ms. Peterson was saying was she did not agree with the sidewalk ordinance. Ms. Peterson responded that was incorrect and she thought we should have sidewalk and would love to have sidewalk everywhere on every side of every block but the City is not going to put them in, they are not going to go for improvement districts unless the residents ask for them and so that piece of sidewalk would just sit there for years. Ms. Berry asked why they have the ordinance if they are going to defer that ordinance every time. Ms. Peterson replied they might not defer every time as they look at the individual cases. Ms. Berry commented that what she was basing it on was more emotional than what the law has set out; Ms. Rountree signed a contract with the City. Ms. Peterson agreed that was probably correct. Ms. Berry also commented that she thought Ms. Poelman and Ms. Peterson do not seem to want the sidewalk based on the fact that they do not think it makes any sense to put the sidewalk there. Ms. Poelman clarified it did not seem to make sense at this time. Ms. Berry restated that Ms. Rountree signed a contract that the sidewalk be put in at this time; the deferral she is talking about does not apply to her.

Mr. Nielsen commented that there are some number of sidewalk agreements floating around that are in this same category and said this was not different than a developer or someone asking for a deferral on a current basis and would not be required to execute an agreement like this one. He said since they changed ~~they~~ the ordinance, all that is before them is a request to revisit this issue and he did not think they should blindly, because of an agreement that was signed under a prior set of criteria, which no longer applies to subdivisions, make everyone put sidewalk in. He said they should take a look at every situation and either recommend to the City Council a deferral or not, whichever they feel should be done. Ms. Berry said she did not think they could blindly look at a property and say they do not think it makes sense to have just 50-feet of sidewalk if it is bound by some kind of contract that the City has signed with the individual.

Mr. Nielsen commented that they did not get back from Staff what they asked for; all they got was a letter from the City Attorney that said they have an agreement that they can enforce. Mr. Handy asked why the City Attorney and City Staff have lined up so strongly against the deferral to which Mr. Nielsen agreed and said he did not get an answer to that question. Mr. Bradley replied that it is an improvement that the City wants to see put in. He said he did not see a need to table the item and suggested that if the Planning Commission wanted to recommend a deferral or not, to go ahead and recommend that to the City Council so it can go forward. He said he did not know what else Staff could provide them and recommended they state their findings for whatever decision they make. Mr. Handy said it was the City Council they had the agreement with and if they felt comfortable recommending a

deferral they can leave it up to the City Council to determine. Mr. Bradley said they needed to make a recommendation one way or the other and move it forward instead of prolonging it for the applicant. Ms. Poelman commented that she believed when they looked at the ordinance there were only about 88 individual lots left within the city that were single lots like this one and it was decided amongst those who were on the Commission at that time to usually defer them because if it will be 20 to 30 years before the rest of the block will be put in, there will be deterioration of that piece of concrete in front of a single house. She said it is different in a whole subdivision where the whole block has sidewalk installed, but when it is just individual lots like this, they have usually been deferred.

MOTION: A motion was made by Reese Nielsen to recommend to the City Council that sidewalk be deferred with respect to application #2609 based on the fact that it fell within the deferral review category and ~~he~~ ~~felt~~ the Planning Commission feels putting a small section of sidewalk in this particular block with sidewalk on the opposite side of the street is not warranted at this time until the City is prepared to put the entire side of the street in a special improvement district. The motion was seconded by Barbara Poelman.

Discussion: Mr. Handy and Ms. Berry suggested changing the wording to say the Planning Commission feels, rather than just he. Mr. Nielsen agreed to that change.

Roll Call:

Reese Nielsen – Aye
Barbara Poelman – Aye
Lynda Berry – Nay
Roger Handy – Aye

The motion passed 3 to 1.

DISCUSSION:

Ms. Berry commented that they needed to readdress the sidewalk ordinance because there was a legal opinion on determining that that was legally binding and the Commission just usurped it. Mr. Nielsen commented that he thought he said it was legally enforceable; that the Commission was within their rights to enforce it. Mr. Handy commented that if the City Council wanted to enforce it they could do so.

Mr. Nielsen asked if there was a way to get a list of any future situation where this may come up at some time. Mr. Bradley explained that there are large lots that could be split depending on if ordinances are changed. He said that currently there is allowed some very minimal frontage and there probably is a good inventory of property out there. Mr. Nielsen said his concern on this one was that it did not tie in anywhere; if it would tie in up the street it would be one thing but to put it in the middle of the street when there is no indication that the City will do anything in his lifetime, all that will happen is make a mess on the ends and be unsightly and unproductive. Ms. Berry asked what the process was to look at the sidewalk ordinance again because it has proven to be a problem because of the deferrals. It established a deferral to allow some leeway so the deferral process but is not firmed up enough for anyone to really know when something applies or does not apply. Mr. Bradley replied that an ordinance would need to go back through the proper public hearing procedure after a task force, Staff, committee or such looked at it and then it would go to the Planning Commission for a recommendation to the City Council. Mr. Handy asked how they would change it to give themselves less leeway and if so, in which way. Ms. Poelman said she thought it had been done because the sidewalk deferral ranking sheet gives the number of points and a number 4 is in the area of discussion which is what they had. Ms. Berry commented that the evaluation criteria is not sufficient as there can be a million ways to

evaluate something like that. Mr. Nielsen agreed and said the City Council decided that the Planning Commission should find a way to evaluate sidewalk and so Mark Teuscher, the previous City Planner, had developed, adjusted and prioritized the ranking system based on various factors. High rankings are never deferred, low rankings are always deferred but most fall into the middle category where they come to the Planning Commission for review. Ms. Berry said it made no sense to have that particular evaluation criteria and she had a problem with them taking a contract and nullifying it. Mr. Bradley said he would look into it. Mr. Handy commented that if they really do want it changed, they need to give Staff some direction as to how they want it changed. Mr. Bradley stated that there are other ordinances that need to be modified and brought up to standard and it needs to be determined which ones will be done first. He said getting that done would be a matter of juggling issues to be able to focus on that and suggested waiting to hear the comments from the City Council on the deferral item before getting to it.

APPLICATION #3045 / SUBDIVISION / 470 SOUTH 100 WEST / REESE BEETON / SKETCH PLAN:

Mr. Bradley presented the site plans for this item. On the plan it showed two existing homes, however the home showing on lot 1 is really a shed. The west lot is vacant except for the shed. A home could be built on that lot, keeping the shed, and still meet the ordinance requirements. It is unknown what the property owner intends to do with the property. If the shed is to be retained it would have to fall under the accessory structure requirements of the lot but the property owner is proposing to have it removed. Mr. Leishman and the Streets Supervisor, Robert Neville, did the sidewalk evaluation. Ms. Berry said she would like to have the Planning Commission be invited to participate in a sidewalk evaluation so they can see how the process is conducted.

MOTION: A motion was made by Roger Handy to adjourn. The motion was seconded by Reese Nielsen and passed unanimously.

The meeting adjourned at 8:23 p.m.

This certifies that the regular meeting minutes of July 15, 2008 are a true and accurate copy as approved by the Planning Commission on August 19, 2008.

Signed: _____

Jeffery R. Leishman, Secretary